

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OUR WICKED LADY LLC,
(d/b/a “Our Wicked Lady”), *et al.*,

Plaintiffs,

-against-

ANDREW CUOMO, in his official capacity as Governor
of the State of New York; **STATE of NEW YORK**;
BILL de BLASIO, in his official capacity as Mayor of
New York City; and **THE CITY of NEW YORK**,

Defendant.
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CASE NO.: 1:21-cv-165

STIPULATION OF
UNDISPUTED FACTS

Hon. Denise L. Cote

Electronically Filed

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the parties in the
above-entitled action that the below facts are undisputed with respect to the instant matter:

1. New York City has the largest population of any city in New York State.
2. As of February 11, 2021, 2,362,410 people have died of COVID-19 worldwide, with 473,873 such deaths in the United States.¹ Since the start of the pandemic in January 2020, more than 44,851 New Yorkers have died from COVID-19² and as of February 11, 2021, there were 654,710 reported cases of COVID-19 a total of 27,869 COVID-19-related deaths reported in New York City.³
3. On March 7, 2020, Defendant Governor Andrew Cuomo (“Governor Cuomo”) issued Executive Order 202, which declared a State of Emergency in New York in response to the threat of the spread of COVID-19 throughout the State.

¹ Johns Hopkins Coronavirus Resource Center COVID-19 Dashboard, found at <https://coronavirus.jhu.edu/map.html>

² See, <https://covid19tracker.health.ny.gov/views/NYS-COVID19Tracker/NYSDOHCOVID19TrackerDailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n#/views>

³ See, <https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>

4. On March 12, 2020, Defendant Mayor Bill de Blasio (“Mayor de Blasio”) declared a local state of emergency in New York City in response to the COVID-19 pandemic.

5. On March 15, 2020, Mayor de Blasio issued City Order 99, which immediately prohibited gatherings in excess of 500 people and capped the capacity on occupancy for eating and drinking establishments at fifty percent (50%) of their normal legally allowed capacity limits. A violation of this Order was a Class B misdemeanor pursuant to New York Penal Law § 70.15(2), which is punishable by up to three (3) months imprisonment.

6. On March 16, 2020, Governor Cuomo issued Executive Order 202.3, which states that “[n]o local government or political subdivision shall issue any local emergency order or declaration of emergency or disaster inconsistent with, conflicting with or superseding the foregoing directives, or any other executive order issued under Section 24 of the Executive Law” and Executive Order 202.5 which states that “no locality or political subdivision shall issue any local emergency order or executive order with respect to response of COVID-19 without the approval of the State Department of Health.” These two Executive Orders required compliance from local governments, including New York City, with respect to the State’s directives and restricted the imposition of inconsistent or conflicting directives or other executive orders.

7. On March 16, 2020, Governor Cuomo issued Executive Order 202.3, which ordered restaurants and bars throughout the State to cease service of food and drink for on premise consumption by 8:00 p.m. that day.

8. Also on March 16, 2020, Mayor de Blasio signed City Order 100, which immediately ordered restaurants and bars to restrict their business to takeout and delivery only.

9. On March 20, 2020 Governor Cuomo issued Executive Order No. 202.6, also known as the “New York State on PAUSE” Order. This Executive Order, among other things,

identified “Essential Businesses” as “[a]ny essential business or entity providing essential services or functions” and further provided that Essential Business would not be subject to the in-person restrictions. The Executive Order identified a series of industries that would be categorized as “Essential.” Restaurants were deemed “Essential retail,” but only for take-out and delivery.

10. On or about May 11, 2020, Governor Cuomo announced the State’s plan for reopening “New York Forward.” This plan included a phased reopening of the various regions of the State under shutdown for the past two months. New York Forward set several metrics to determine if a region could reopen.

11. The prohibition on indoor dining throughout the State was lifted on June 12, 2020 for regions in Phase 3 of the State’s four-phase reopening timeline pursuant to Executive Order 202.41, subject to additional guidance from the State. State guidance provided that indoor dining in those regions in Phase 3 was limited to 50% capacity.

12. New York City reached Phase 3 on July 6, 2020 and Phase 4 on July 20, 2020.

13. On July 6th, 2020, Governor Cuomo issued Executive Order No. 202.48, which extended the prohibition on indoor dining in New York City.

14. On July 21, 2020, Governor Cuomo issued Executive Order 202.53, which announced that New York City had entered Phase 4 of New York Forward on July 20, 2020, with the exception of indoor common portions of retail shopping malls and places of low-risk indoor arts and entertainment.

15. On September 9, 2020, Governor Cuomo issued Executive Order 202.61, which, *inter alia*, modified Executive Order 202.48 “to allow indoor food services and dining in New York City beginning September 30, 2020, so long as Department of Health and any other applicable State-issued guidance is strictly adhered to.”

16. The New York State Department of Health issued guidance which, pursuant to Executive Order 202.61, required New York City bars and restaurants to adhere to and provided that restaurants and bars in New York City could open for indoor dining at twenty-five percent (25%) of their maximum occupancy.

17. On September 9, 2020, restaurants outside of New York City and in certain parts of the State, were allowed to operate indoor dining at 50% capacity, subject to adherence to applicable State-issued guidance.

18. On December 11, 2020, Governor Cuomo issued Executive Order 202.81, which suspended the authorization for indoor dining at restaurants and bars in New York City effective December 14, 2020.

19. On January 29, 2021, Governor Cuomo announced that indoor dining at restaurants and bars in New York City would be allowed to resume beginning February 14th, 2021, at a maximum occupancy of twenty-five percent (25%) of their maximum occupancy. A fifty percent (50%) maximum occupancy requirement remained in effect outside New York City.

20. On February 8, 2021, Governor Cuomo announced that indoor dining at eating and drinking establishments in New York City would be allowed to resume beginning February 12, 2021, rather than February 14, 2021, at twenty-five percent (25%) of the business's maximum occupancy. A fifty percent (50%) maximum occupancy requirement is in effect for jurisdictions outside New York City.

Dated: February 17, 2021
New York, New York

/S
Kenneth E. Belkin, Esq.
Attorney for Plaintiffs
225 Broadway, Suite 715
New York, New York 10007
c: (718) 724-3466

f: (212) 566-8165
e: kb@belkinlaw.com

/S

Matthew L. Conrad, Esq.
Assistant Attorney General
New York State
Office of the Attorney General
Attorney for State Defendants
28 Liberty Street
New York, New York 10005

/S

Kerri A. Devine, Esq.
Assistant Corporation Counsel
New York City Law Department
Attorney for City Defendants
100 Church Street
New York, New York 10007

/S

Samantha M. Schonfeld, Esq.
Assistant Corporation Counsel
New York City Law Department
Attorney for City Defendants
100 Church Street
New York, New York 10007